

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ASIA GAINES, for herself and as next friend of  
her minor child, “JC,”  
  
Plaintiffs,  
  
v.  
  
THE CHICAGO BOARD OF EDUCATION;  
KRISTEN A. HAYNES; and JUANITA TYLER,  
  
Defendants.

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Case No. 19-cv-00775  
  
Judge Matthew F. Kennelly

**Defendants' Opposed Motion For Leave to Supplement the Parties' Joint Pretrial Order  
to Designate the Deposition Testimony of Charlene Haynes**

Defendants, Kristen Haynes, The Chicago Board of Education, and Juanita Tyler (hereinafter “Defendants”), through their respective undersigned counsel, moves for leave to supplement the parties’ Joint Pretrial Order in order to designate the deposition testimony of Charlene Haynes. In support thereof, Defendants state as follows:

1. The parties filed the Joint Pretrial Order on November 17, 2023.
2. On August 27, 2024, counsel for the Board informed co-defendants (with consent of the witness to share this information with counsel and the Court) that Charlene Haynes underwent a C-section the day prior, giving birth to twins. That same day, defense counsel informed Plaintiff's counsel of the news, that they intended to designate her deposition testimony, and that they would provide page and line designations shortly.
3. The morning of August 28, 2024, defense counsel provided their proposed page and line designations of Charlene Haynes's deposition to Plaintiff's counsel.

4. On August 31, 2024, Plaintiff's counsel provided their objections to defense counsel's page and line designations, proposed their own page and line designations of Charlene Haynes's deposition, and additionally proposed to designate part of Charlene Haynes's criminal trial testimony.

5. On September 2, 2024, Plaintiff provided their final witness list for trial to Defendants, listing Charlene Haynes as a will call witness.

6. On September 4, 2024, defense counsel provided Plaintiff with Defendants' basis for admissibility as to each of Plaintiff's objections, as well as Defendants' objections to Plaintiff's proposed page and line designations for Charlene Haynes. That same day the parties had a meet and confer conference in attempts to bridge the gap on agreement for designated testimony for Ms. Charlene Haynes.

7. The late evening of September 4, 2024, Plaintiff informed Defendants that Plaintiff no longer wishes to call Charlene Haynes in their case in chief, and will no longer agree to designate her trial testimony.

8. Deposition testimony may be admitted at trial despite being hearsay under Federal Rule of Evidence 804 if, among other requirements, the declarant is unavailable. A declarant is considered unavailable if: (1) a privilege applies to his testimony; (2) she "refuses to testify about the subject matter despite a court order to do so"; (3) she "testifies to not remembering the subject matter"; (4) she "cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness"; or (5) she "is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure ... the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or ...

the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4). Fed. R. Evid. 804(a).

9. As Charlene Haynes is recovering from major abdominal surgery in giving birth to twins and undergoing a C-section, and is expected to be in recovery throughout trial, she is unavailable to testify at trial because of a "then-existing infirmity, physical illness, or mental illness." Fed. R. Evid. 804(a)(4); *United States v. Donaldson*, 978 F.2d 381, 392-93 (7th Cir. 1992) (allowing videotaped deposition to be presented to the jury when the witness gave birth shortly before trial).

10. The deposition of Charlene Haynes was video recorded by Video Instanter. Video Instanter will be able to cut and edit the video of her deposition pursuant to the Court's ruling on Defendants' proposed page and line designations. According to Video Instanter, to cut the video down with subtitles, it will take at least forty-eight (48) hours before being able to produce it to play for the jury at trial. Pursuant to this Court's Final Pretrial Order, a copy of Defendants' proposed designations, Plaintiff's objections, and Defendants' basis for admissibility is attached hereto as Exhibit A. Due to confidential information contained in the deposition transcript of Charlene Haynes, Defendants will provide the Court via email with a copy of the deposition transcript of Charlene Haynes upon filing this motion.

11. Accordingly, Defendants respectfully request this Honorable Court grant their Motion for Leave to Supplement the Parties' Joint Pretrial Order in order to designate the deposition testimony of Charlene Haynes and issue a ruling on the parties' proposed page and line designations of Charlene Haynes's deposition in order to timely edit and receive the video deposition of Charlene Haynes accordingly to play at trial.

WHEREFORE, Defendants respectfully request this Honorable Court grant their Motion for Leave to Supplement the Parties' Joint Pretrial Order and issue a ruling on the parties' proposed page and line designations of Charlene Haynes's deposition.

Respectfully submitted,

/s/ Danielle Mikhail

Danielle Mikhail  
Hinshaw & Culbertson LLP  
151 N. Franklin Street  
Suite 2500  
Chicago, IL 60606  
312-704-3047, O  
312-704-3001, F  
Dmikhail@hinshawlaw.com  
*Attorneys for Kristen Haynes*

/s/ Brian Kolp

Brian Kolp  
Senior Assistant General Counsel  
Chicago Board of Education  
Department of Law  
One North Dearborn Street  
Suite 900  
Chicago, Illinois 60602  
(P) 773-553-1312  
(F) 773-553-1707  
bfkolp@cps.edu  
*Attorneys for Defendant Chicago Board of Education*

/s/ Andrew Rima

Andrew Rima  
Goldman Ismail Tomaselli Brennan & Baum LLP  
200 South Wacker Drive, Suite 2200  
Chicago, IL 60606  
Tel: 312-681-6000  
arima@goldmanismail.com  
mmcbride@goldmanismail.com  
cbriggs@goldmanismail.com  
*Attorneys for Defendant Juanita Tyler*

**CERTIFICATE OF SERVICE**

I, Danielle Mikhail, an attorney, certify that on September 5, 2024, I filed the foregoing Motion for Leave to Supplement the Parties' Joint Pretrial Order using the Court's CM/ECF system, which effected service on all counsel of record.

/s/ Danielle Mikhail

Danielle Mikhail